Court File No.

e-document-é T-1951-26 ID 1
ISSUED
FEDERAL COURT
COUR FÉDÉRALE
ÉMIS
April 16, 2026
16 avril 2026
Maya-Jo Blake-Janniere
TOR 1

FEDERAL COURT

BETWEEN:

ENVIRONMENTAL DEFENCE CANADA and ONTARIO NATURE

Applicants

- AND -

MINISTER OF THE ENVIRONMENT, CLIMATE CHANGE AND NATURE and TOWN OF WASAGA BEACH

Respondents

APPLICATION UNDER SECTION 18.1
of the *Federal Courts Act*, RSC 1985, c F-7

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicants. The relief claimed by the Applicants appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants request that this application be heard at **Toronto, Ontario**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: _____

Issued by:

_____

Address of local office:
Federal Court
180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

TO: Minister of the Environment, Climate Change and Nature
c/o Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1

Andrew McNeill
Chief Administrative Officer
Town of Wasaga Beach
30 Lewis Street
Wasaga Beach, ON L9Z 1A1

APPLICATION

This is an application for judicial review of the failure of the Minister of the Environment, Climate Change and Nature (**Minister**) to recommend that the Governor in Council (**Cabinet**) make an emergency order under s. 80 of the *Species at Risk Act*, SC 2002, c 29 (***SARA***) to protect Piping Plover (*Charadrius melodus circumcinctus* subspecies) (**Piping Plover**) critical habitat on Beach Area 1 of Wasaga Beach, Ontario.

Over the last year, Ontario has removed all provincial protections for critical habitat on Beach Area 1, triggering imminent threats to the Piping Plover's survival and recovery by both the Town of Wasaga Beach (**Town**) and third parties. The Town has already begun mechanical beach raking – an activity known to damage and destroy habitat features, including for nesting – in areas identified as Piping Plover critical habitat. Unless an emergency order is in place, which Cabinet cannot issue until the Minister makes the recommendation, the Town and third parties can continue damaging or destroying critical habitat before and after the birds return from their migration, which could occur any day. This damage or destruction will jeopardize the Piping Plover's survival and recovery, contrary to *SARA*'s purposes.

The Minister's delay in recommending the emergency order is unlawful under s. 80(2) of *SARA.* After the Minister failed to take any action to address the looming threats to Piping Plover and their habitat on Wasaga Beach when the Applicants notified her in mid-2025, the Applicants formally petitioned the Minister for the emergency order recommendation in January 2026. In the almost three months since then, the Applicants provided multiple follow-up submissions to inform the Minister that these threats have escalated in their imminence and severity. The Minister still refuses to recommend the emergency order, prejudicing the Piping Plover's chances at survival and recovery, the Applicants' interest in protecting the species, and Cabinet's ability to respond to the emergency.

THE APPLICANTS MAKE APPLICATION FOR:

1. An order in the nature of *mandamus* compelling the Minister, within 15 days of the Court's judgment, to comply with her duty under s. 80(2) of *SARA* to recommend that Cabinet make an emergency order to protect Piping Plover habitat on Beach Area 1 from imminent threats to the species' survival and recovery.

2. In addition or in the alternative to the relief sought in paragraph 1, an order declaring that the Minister's ongoing delay in recommending an emergency order is unreasonable and unlawful under s. 80(2) of *SARA*.

3. An order for an interim and interlocutory injunction prohibiting the Town and third parties from damaging or destroying critical habitat or otherwise interfering with the Piping Plover's life processes on Beach Area 1 pending the hearing of this Application.

4. If this Application is dismissed, an order that the Applicants shall not be required to pay costs to the Respondents under Rule 400 of the *Federal Courts Rules*.

5. Costs of this Application.

6. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

The Parties

1. The Applicants, Environmental Defence Canada and Ontario Nature, are public interest litigants.

2. The Applicants are registered charities with a genuine interest in and longstanding history of working on the survival and recovery of the Piping Plover. The Applicants also have a genuine interest in the effective

administration of *SARA* to achieve its statutory purposes of preventing wildlife species from becoming extinct or extirpated (extinct in the wild) and providing for their recovery.

3. The Minister is the "competent minister" under s. 2 of *SARA* for carrying out statutory duties to ensure the survival and recovery of the Piping Plover.

4. The Town is "directly affected by the order sought" in this Application under Rule 303(1)(a) of the *Federal Courts Rules*.

The Piping Plover is an endangered species listed under* SARA *with limited critical habitat

5. The Piping Plover is a migratory shorebird that builds nests and raises its chicks on sandy freshwater beaches in Ontario.

6. Parliament enacted *SARA* in 2003 to meet Canada's commitments under the United Nations *Convention on Biological Diversity*, which now include obligations under the Kunming-Montreal Global Biodiversity Framework to stop the crisis of global species extinction.

7. The legislated purposes of *SARA* include preventing the extinction and providing for the recovery of extirpated, endangered and threatened species. These species are listed on Schedule 1 of *SARA* and entitled to its protections.

8. The Committee on the Status of Endangered Wildlife in Canada (**COSEWIC**) initially designated the Piping Plover as a threatened species in 1978. COSEWIC upgraded the Piping Plover's designation to endangered in 1985 and has since repeatedly confirmed its status as an endangered species.

9. From the time of its enactment in 2003, *SARA* has adopted COSEWIC's findings and listed the Piping Plover as an endangered species in Schedule 1.

10. The Ontario Great Lakes subpopulation of the Piping Plover was once extirpated. Historical numbers of Piping Plovers in Ontario ranged from 70 to

90 pairs, but human activities caused the subpopulation to decline and then disappear altogether in the late 1900s.

11. In 2006, Environment and Climate Change Canada (**ECCC**) published its Recovery Strategy for the Piping Plover (*Charadrius melodus circumcinctus*) in Canada (**Recovery Strategy**). At the time, the Recovery Strategy noted that Piping Plover breeding had not been observed around the Great Lakes in Ontario since 1977 and the species was considered extirpated in the region.

12. In 2007, one pair of Piping Plovers returned to nest at the Great Lakes for the first time in 30 years, after intensive breeding efforts in the United States.

13. That same year, Ontario enacted the *Endangered Species Act, 2007*, SO 2007, c 6 (***ESA***) and adopted protections for the Piping Plover as an endangered species, such as prohibiting the damage or destruction of its habitat.

14. In 2013, ECCC published its Action Plan for the Piping Plover (*Charadrius melodus circumcintus*) in Ontario (**Action Plan**).

15. The Action Plan identified four sites in Ontario as containing Piping Plover critical habitat – defined under *SARA* as the habitat necessary for the survival or recovery of a species – including on Wasaga Beach.

16. Since its return in 2007, the Piping Plover subpopulation in Ontario peaked at 15 breeding pairs in 2016.

17. However, this number dropped down to only seven pairs in 2025, three of which were unsuccessful in breeding.

18. The Piping Plover is back on the brink of extirpation in Ontario.

The Piping Plover needs critical habitat on Wasaga Beach for nesting and raising chicks, among other life processes required for its survival and recovery

19. As a migratory species, Piping Plovers fly south for the winter each year. In mid-April, they return to their habitat along Ontario's freshwater beaches to breed and raise new chicks over the spring and summer.

20. Piping Plovers do not reuse the exact same nests across years, but they exhibit high site fidelity, meaning they prefer to return to past sites to build new nests, as long as these sites continue to have habitat features that support breeding and other life processes.

21. Piping Plovers build their nests by digging shallow depressions in the sand, known as scrapes, and lining them with pebbles, shells or driftwood for camouflage from predators. Piping Plover nesting requires beaches with undisturbed, firm sand and various types of natural debris.

22. If nesting sites and other habitat features are damaged or destroyed in their absence, Piping Plovers may not return from their migration to breed in mid-April at all or may attempt to breed without success.

23. Wasaga Beach is the world's longest freshwater beach, stretching across the southern shores of Georgian Bay in Lake Huron. Wasaga Beach is also one of Canada's most intensely used recreational beaches, with the Town reporting more than two million beachgoers in 2025, predominantly during the summer months.

24. Wasaga Beach is divided into eight sections, including six numbered sections (Beach Areas 1 through 6), Allenwood Beach and New Wasaga Beach.

25. Beach Area 1 is one of these numbered sections. The *ESA*'s prohibitions on habitat damage or destruction have allowed the Piping Plover to reestablish and persist on Beach Area 1, despite the area's high number of visitors.

26. Since the Piping Plover returned to Ontario from extirpation in 2007, Beach Area 1 has been the most reliable and productive nesting site in Ontario.

27. Beach Area 1 has seen 18 continuous years of Piping Plover nesting. During this time, 70% of all Piping Plover chicks that survived to adulthood in Ontario originated from Beach Area 1. No other nesting site in Ontario has been used for longer than five years continuously or nine years sporadically, and no new known nest sites have been established since 2019.

28. The nesting site at Beach Area 1 serves as an essential source for the Piping Plover population throughout the province, and its continued protection is needed to ensure the survival and recovery of the species.

29. Ontario has previously recognized the ecological significance of Beach Area 1 by including it within Wasaga Beach Provincial Park, to be managed and conserved under the *Provincial Parks and Conservation Reserves Act, 2006*, SO 2006, c 12 (***PPCRA***).

There are no legal protections for the Piping Plover's critical habitat on Wasaga Beach during the birds' annual migration and minimal protection after they return to nest

30. Human activities that damage or destroy Piping Plover habitat, including vehicle use, commercial and residential development, and mechanical beach raking for aesthetics and recreational use, are primary threats to the Piping Plover's survival and recovery. ECCC has studied and understood these threats since at least 2013 when they were identified in the Action Plan.

31. Despite the Action Plan identifying all of Beach Area 1 as critical habitat in 2013, no order to prohibit the damage or destruction of this critical habitat has ever been recommended by the Minister or made by Cabinet under *SARA*.

32. No federal law protects the Piping Plover's habitat at Beach Area 1:

a. *SARA* prohibits harming members of a listed species and damaging or destroying its residence (defined as nests that are occupied or habitually occupied). It does not prohibit damaging or destroying the habitat (including any currently unoccupied nesting sites) of a listed species while it is away on migration, unless the Minister and Cabinet take further action such as making an emergency order or critical habitat order. No further action has been taken to protect Piping Plover habitat on Beach Area 1.

b. The *Migratory Birds Convention Act, 1994*, SC 1994, c 22 prohibits possessing or commercially trading migratory birds or nests and releasing substances that are harmful to migratory birds. It does not prohibit damaging or destroying the habitat (including any currently unoccupied nesting sites) of migratory birds, unless Cabinet takes further action such as making regulations. No further action has been taken to protect Piping Plover habitat on Beach Area 1.

33. Due to legislative changes in Ontario over the last year, no provincial law protects the Piping Plover's habitat at Beach Area 1:

a. The *ESA* previously protected Piping Plover habitat. Bill 5, the *Protect Ontario by Unleashing our Economy Act*, received Royal Assent on June 5, 2025. Schedule 2 of Bill 5 immediately amended the *ESA* to exclude nesting sites from the definition of protected habitat if they are not currently occupied or habitually occupied by a species. The amended *ESA* no longer prohibited damaging or destroying nesting sites while the Piping Plover was away on migration, and it offered limited habitat protection upon the birds' return.

b. The *PPCRA* previously protected Beach Area 1 as part of Wasaga Beach Provincial Park. Bill 68, the *Plan to Protect Ontario Act*, received Royal Assent on November 27, 2025. Schedule 18 of Bill 68 immediately excluded Beach Area 1 from Wasaga Beach Provincial

Park, with the intention of transferring ownership to the Town. The amended *PPCRA* no longer protects Beach Area 1 from damage or destruction.

c. Ontario repealed the *ESA* altogether on March 30, 2026. Through Order in Council 465/2026, Ontario replaced the *ESA* with Schedule 10 of Bill 5, the *Species Conservation Act, 2025*, SO 2025, c 4, Sch 10 (***SCA***). Section 4 of the *SCA* states that its protections "do not apply" to migratory birds. The Piping Plover is no longer listed as an endangered species on the *Protected Species in Ontario List*, O Reg 60/26, enacted under the *SCA*.

34. There are currently no municipal bylaws enacted by the Town to protect Piping Plover habitat on Beach Area 1.

The Piping Plover faces imminent threats to its survival and recovery

35. Ontario's rescission of protections for critical habitat on Beach Area 1 triggers at least three different types of imminent threats to the Piping Plover's survival and recovery. Until last year, these threats were prohibited or managed by the provincial *ESA* and *PPCRA* without the need for federal action under *SARA*.

36. First and most urgently, the Town has now followed through on its plans to mechanically rake the Piping Plover's critical habitat on Beach Area 1. This is consistent with the Town's publicly stated desire to rake the area since at least 2017 and evidence over the past year indicating that the Town would do so before the Piping Plovers return from their migration in mid-April 2026.

37. In 2025, the Town bought a new mechanical rake with a grant paid by Ontario and used it to rake Allenwood Beach, another section of Wasaga Beach that previously hosted Piping Plovers, during each week of the peak summer tourism season.

38. Mechanical beach raking involves using a tractor-pulled machine to flatten uneven surfaces, drag rows of steel tines through the sand and remove all debris from the beach.

39. Mechanical raking damages or destroys Piping Plover habitat by, among other things:

    a. Creating soil compaction by driving a tractor across the beach surface;

    b. Flattening beach dunes used for nesting and foraging;

    c. Disturbing and drying out firm sand used for digging nest scrapes;

    d. Reducing populations of insects and invertebrates used for food; and

    e. Removing natural beach debris, such as pebbles, shells, driftwood, vegetation and wrack used for foraging and predator evasion.

40. On or around April 13, 2026, the Town mechanically raked parts of Piping Plover critical habitat on Beach Area 1.

41. Second, the Town unveiled a long-term commercial development plan in 2025 called Destination Wasaga. As part of Destination Wasaga, the Town has announced the construction of various development projects on or around Beach Area 1 beginning in 2026, including a shoreline trail, a gondola, a bridge, a commercial and residential village, a hotel, a harbour and a raised road. These development projects, both independently and along with any additional mechanical raking needed to prepare the beach surface for construction, will damage or destroy Piping Plover critical habitat.

42. Third, Wasaga Beach received more than two million visitors in 2025. Damaging or destructive activities by third parties, such as driving vehicles, walking off-leash dogs, kiteboarding, using fireworks and feeding predators around nesting sites, were previously prohibited or managed under the *ESA* and *PPCRA*. Now, Piping Plover habitat on Beach Area 1 will receive no protection from third-party activities. If allowed to occur, these activities will likely damage or destroy critical habitat or otherwise interfere with the Piping

Plover's life processes and jeopardize its survival and recovery, regardless of the Town's own raking and development activities.

43. On or around April 13, 2026, a motorized vehicle was used throughout Plover critical habitat on Beach Area 1.

44. ECCC's Action Plan determined that maintaining a minimum of four Piping Plover breeding pairs and maintaining or increasing the current distribution in Ontario is necessary to achieve the species' survival and recovery, the core purposes of *SARA*.

45. In 2025, only four out of seven Piping Plover breeding pairs were observed successfully breeding in Ontario. This number represents a decrease from the high of 15 breeding pairs observed in 2016.

46. Since Piping Plover breeding pairs are back down to the minimum number identified in the Action Plan, any further loss of critical habitat or interference with the Piping Plovers' life processes is highly likely to jeopardize the species' chances of survival and recovery.

47. By damaging or destroying critical habitat, the Town's raking and development, as well as third-party activities on Beach Area 1, pose imminent threats to the Piping Plover's survival and recovery.

The Minister has been aware of these imminent threats to the Piping Plovers since at least August 2025

48. On August 6, 2025, the Applicants and other public interest groups wrote to the Minister to advise her of the threats to the Piping Plover, including at Beach Area 1, due to Ontario's recent legislative changes. The letter sought a critical habitat order under s. 58 of *SARA* for Piping Plovers across Ontario, including at Wasaga Beach, to ensure continued habitat protection in light of threats triggered by Ontario's revisions to the *ESA* and *PPCRA*.

49. On October 10, 2025, the Assistant Deputy Minister responded to the August 6 letter. The Minister's representative refused to commit to a critical habitat order and failed to provide details on any planned equivalent habitat protection or any other action under *SARA*.

50. Since at least December 2025, ECCC representatives have been meeting with the Town to discuss public concerns surrounding the Piping Plover.

51. On January 27, 2026, the Applicants sent a petition to the Minister to provide additional information on the imminent threats and to specifically request that she recommend an emergency order to protect Piping Plover habitat on Beach Area 1 under s. 80(2) of *SARA* (**Petition**).

52. A scientific report was appended to the Petition to assist the Minister in making an imminent threat assessment to support the emergency order recommendation. This report provided expert analysis, consistent with the Minister's policy on imminent threat assessments, demonstrating that:

    a. The Piping Plover is facing new or intensifying human-induced threats due to Ontario's legislative changes, the Town's plans for Beach Area 1 and other destructive beach activities;

    b. The impact of these threats will make the Piping Plover's survival and recovery highly unlikely or impossible; and

    c. These threats require immediate intervention beyond existing protection measures.

53. The Applicants also attached numerous statements by Town officials detailing the Town's intention to mechanically rake and develop Beach Area 1 in 2026.

54. In the Petition, the Applicants proposed specific measures to include in an emergency order to address the imminent threats to the Piping Plover's survival and recovery, including a prohibition on mechanical raking and use of motorized vehicles throughout Beach Area 1.

55. Given the urgency of the situation, the Applicants requested that the Minister recommend an emergency order by March 1, 2026. This deadline would ensure protection for Piping Plover critical habitat on Beach Area 1 before the snow melt in March and the return of the Piping Plovers in mid-April 2026.

56. The Applicants also requested that the Minister confirm by February 10, 2026 whether she would meet the March 1 deadline to recommend an emergency order.

57. On February 5, 2026, an ECCC representative acknowledged receipt of the Petition but stated that ECCC could not commit to the March 1 deadline.

58. On February 16, 2026, an ECCC representative confirmed that the Petition complied with an internal policy for assessing imminent threats to support a *SARA* emergency order recommendation but stated again that ECCC could not commit to the March 1 deadline.

59. On March 13, 2026, the same ECCC representative sent a letter to confirm that ECCC would undertake an assessment of imminent threats to the Piping Plover at Wasaga Beach. The letter stated again that ECCC could not commit to a deadline.

60. Between February 11 and April 14, 2026, the Applicants continued to contact the Minister and ECCC representatives to communicate their expectation that the Minister would promptly recommend an emergency order or secure equivalent protection for Beach Area 1. These communications included three follow-up submissions to the Petition:

    a. On March 11, 2026, the Applicants sent a follow-up submission to inform the Minister that non-binding assurances by the Town that it would protect Piping Plover habitat could not relieve the Minister of her mandatory duty under s. 80 given the imminent threats identified in the Petition.

b. On April 7, 2026, the Applicants sent a follow-up submission to update the Minister that Ontario had repealed the *ESA* and enacted the *SCA*. The *SCA* delisted the Piping Plover as a provincially endangered species and intensified the imminent threats posed by both the Town and third parties.

c. On April 14, 2026, the Applicants sent a follow-up submission to provide the Minister with photographic evidence of mechanical raking and motorized vehicle activity throughout critical habitat on Beach Area 1 on or around April 13, 2026.

61. As of the date of this Notice of Application, neither of the April follow-up submissions have been responded to.

62. In the same time period, the Applicants communicated with Town representatives to request that the Town adopt enforceable protections for Beach Area 1 to render a *SARA* emergency order unnecessary. The Town acknowledged receipt of the Applicants' requests but declined to commit to any binding restrictions to protect Piping Plover habitat.

63. As of the date of this Notice of Application, neither the Minister nor the Town has confirmed that a legally binding mechanism has been or will be adopted to prohibit the Town or third parties from damaging or destroying critical habitat on Beach Area 1 or otherwise interfering with the Piping Plover's life processes in the area.

***The Minister has a duty to recommend an emergency order under s. 80(2) of* SARA**

64. An emergency order is an urgent and temporary measure under s. 80 of *SARA* to prevent species extinction and safeguard opportunities for recovery.

65. Cabinet can only exercise its power to make an emergency order under s. 80(1) on the Minister's recommendation under s. 80(2).

66. Where no provincial measure exists to sufficiently protect a listed species, imminent threats to the survival or recovery of the species can be considered obvious.

67. For migratory birds, including the Piping Plover, Cabinet can issue an emergency order that identifies habitat necessary for the survival or recovery of the species, requires parties to take actions that protect the species, and prohibits any activities that may adversely affect the species and its habitat.

68. The Minister must recommend an emergency order under s. 80(2) when she is, or reasonably should be, of the opinion that a listed species faces imminent threats to its survival or recovery.

69. Threats to either survival or recovery are independently sufficient to trigger the Minister's duty to recommend an emergency order.

70. This mandatory duty applies to subpopulations, or only part of the range of a listed species, and it does not require the imminent threats to affect the entirety of the Canadian population of a given species.

71. The Minister must carry out this duty in accordance with the precautionary principle, meaning inaction is not permitted due to a lack of full certainty. Imminent threats need not be guaranteed to materialize.

72. The Minister is only exempt from this mandatory duty through s. 81 if she is of the opinion that equivalent measures have been taken under another federal law to protect the species from identified imminent threats.

73. The Town's mechanical raking and development, as well as third party activities, on Beach Area 1 enabled by Ontario's removal of legal protections, all pose imminent threats to both the survival and recovery of the Piping Plover in Ontario.

74. There are no equivalent measures under another federal law protecting the Piping Plovers and their critical habitat on Beach Area 1.

75. The Minister has a public duty to provide Cabinet with the emergency order recommendation.

The Minister's delay in recommending an emergency order is unreasonable

76. The Minister has been aware of the jeopardy faced by the Piping Plover on Wasaga Beach since at least August 2025, and the Applicants formally requested the emergency order recommendation nearly three months ago.

77. As s. 80 is an emergency provision, timely action by the Minister is required and inherent to Parliament's vesting of these powers in the Minister.

78. Although the Minister may require time to consider an emergency order recommendation, this period must correspond to the imminence and severity of the threats facing a listed species.

79. Delay that is not responsive to the imminence and severity of the threats to a listed species is unreasonable, as it prejudices and could potentially foreclose Cabinet's ability to act on the emergency. It is also contrary to the express purposes of *SARA* and Parliament's intent in enacting s. 80.

80. The Piping Plover faces both imminent and severe threats at Beach Area 1. Not only is the Town free to mechanically rake the area before or after the Piping Plovers return in mid-April, but it has already begun to do so. As detailed in the Petition, if this activity is not curtailed, it would render achieving the Piping Plover's survival and recovery across Ontario highly unlikely, if not impossible. The Town and third parties are also free to use Beach Area 1 – such as by driving motorized vehicles throughout critical habitat, as has already occurred – and develop the beachfront in a manner that would also jeopardize the Piping Plover's survival and recovery.

81. In light of these threats, the Applicants provided the Minister with a reasonable amount of time to make the emergency order recommendation.

82. The Minister has not yet carried out her mandatory duty under s. 80(2) to recommend that Cabinet make the emergency order, and she has not confirmed with the Applicants when she plans on making the recommendation.

The Applicants are entitled to a* mandamus *order

83. The Applicants meet the requirements to seek *mandamus* to compel the Minister to recommend an emergency order for the Piping Plover.

84. The Minister has a public legal duty to recommend an emergency order under s. 80(2) of *SARA* when she is, or reasonably should be, of the opinion that a listed species faces imminent threats to its survival or recovery. The Piping Plover faces imminent threats to both its survival and recovery.

85. This duty is owed to the Applicants as public interest litigants with a genuine and longstanding interest in the Piping Plover's survival and recovery.

86. The Applicants demanded performance of the Minister's duty and provided a reasonable time to comply based on the imminence and severity of the threats facing the Piping Plover. The Minister has refused to act.

87. No other adequate remedy is available to the Applicants.

88. The order sought would have practical effect. Compelling the Minister to recommend an emergency order under s. 80(2) is a necessary precondition to Cabinet making the emergency order under s. 80(1) to protect the Piping Plover's critical habitat on Beach Area 1.

89. There is no equitable bar to the order sought.

90. The balance of convenience favours *mandamus*.

General grounds for the Application

91. The Applicants rely on: ss. 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7; the *Federal Courts Rules*, SOR/98-106; the *Species at Risk Act*, SC 2002, c 29; the *Convention on Biological Diversity*, 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993); the *Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity*: Kunming-Montreal Global Biodiversity Framework, CBD/COP Dec 15/4, UNEPOR, 2022, 1 at 4; the *Migratory Birds Convention Act, 1994*, SC 1994, c 22; the *Endangered Species Act*, 2007, SO 2007, c 6; the *Provincial Parks and Conservation Reserves Act, 2006*, SO 2006, c 12; Bill 5, *Protect Ontario by Unleashing our Economy Act*, 2025, 1st Sess, 44th Leg, Ontario, 2025, Schedules 2, 10 (assented to June 5, 2025), SO 2025, c 4; Bill 68, *Plan to Protect Ontario Act (Budget Measures), 2025 (No. 2)*, 1st Sess, 44th Leg, Ontario, 2025, Schedule 18 (assented to 27 November 2025), SO 2025, c 15; the *Species Conservation Act, 2025*, SO 2025, c 4, Sch 10; and such further grounds as counsel may advise.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. Affidavits of representatives of the Applicants, to be affirmed;

2. Such further material as the Applicants may file and this Court may consider.

DATE: April 16, 2026

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